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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

28 DEFS.' RJN IN SUPPORT OF MOT. TO DISMISS
CASE NO.: 5:23-CV-00964-SB-E

1 **I. INTRODUCTION**

2 Defendants TikTok Inc. and ByteDance Inc. respectfully request that the
3 Court consider Exhibits A through J attached to the Declaration of Victor Jih (“Jih
4 Decl.”) in Support of Defendants’ Request for Judicial Notice, in connection with
5 Defendants’ Motion to Dismiss Complaint, filed concurrently herewith. These
6 Exhibits are properly before the Court under the incorporation by reference
7 doctrine. This doctrine allows courts to consider documents that are “referenced
8 extensively” or “form the basis” of the claims, as long as there is no issue of
9 authenticity. *Yoon v. Lululemon United States*, 549 F. Supp. 3d 1073, 1078 (C.D.
10 Cal. 2021). These Exhibits include TikTok’s Business Help Center referenced
11 throughout the Complaint, the Consumer Reports article that Plaintiff quotes, and
12 the three websites Plaintiff visited that give rise to her claims of disclosure.

13 In addition to the Exhibits incorporated by reference, Defendants ask the
14 Court to take judicial notice of Exhibit K of the Jih Decl., which contains sections
15 of the Legislative Counsel’s Digest for AB 1671, as amended on March 17,
16 2016. Legislative history is an appropriate candidate for judicial notice and can
17 thus be considered on a motion to dismiss.

18 Federal courts may take judicial notice of documents that are “not subject to
19 reasonable dispute because [they] . . . can be accurately and readily determined
20 from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid.
21 201(b). Courts may consider documents incorporated by reference and matters of
22 judicial notice on a Rule 12(b)(6) motion to dismiss. *United States v. Ritchie*, 342
23 F.3d 903, 908 (9th Cir. 2003). Judicial notice is warranted because these Exhibits
24 are from publicly available websites and sources and their contents are not subject
25 to reasonable dispute.

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DEFS.’ RJD IN SUPPORT OF MOT. TO DISMISS
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1 **II. THE COURT CAN TAKE JUDICIAL NOTICE OF TIKTOK'S**
 2 **BUSINESS HELP CENTER**

3 Plaintiff relies on and cites to TikTok's Business Help Center website to
 4 explain how the piece of code provided by TikTok operates. *See, e.g.*, Compl. ¶
 5 36 ("According to TikTok's own documentation, TikTok Pixel collects the
 6 following information"). Where a plaintiff proffers portions of a website, that
 7 entire website may be incorporated by reference. *See Knievel v. ESPN*, 393 F.3d
 8 1068, 1076-77 (9th Cir. 2005) ("[A] computer user necessarily views web pages in
 9 the context of the links through which the user accessed those pages.").

10 Here, the Court may consider two pages on TikTok's Business Help Center
 11 website. **Exhibit A** of the Jih Decl., is a true and accurate copy of the webpage
 12 titled, "About TikTok Pixel," which is publicly available at:

13 <https://ads.tiktok.com/help/article/tiktok-pixel?redirected=2>, (last visited July 19,
 14 2023). This page is specifically quoted in the Complaint. *See* Compl. ¶
 15 36. Plaintiff relies on the content of this page to support her allegations

16 throughout the Complaint. *See e.g.*, *id.* ¶¶ 26, 30. **Exhibit B** of the Jih Decl. is a
 17 true and accurate copy of a webpage within TikTok's Business Help Center titled,
 18 "About Events API," which is publicly available at:

19 <https://ads.tiktok.com/help/article/events-api?lang=en>, (last visited July 19,
 20 2023). While not specifically referenced in the Complaint, this webpage is
 21 viewable and under the same section of TikTok's website as **Exhibit A** of the Jih
 22 Decl., the webpage that is referenced in the Complaint.

23 Courts routinely take judicial notice of publicly available websites and their
 24 contents. *See, e.g.*, *Wallster, Inc. v. Redbubble, Inc.*, No. 2:22-cv-02958, 2022 WL
 25 17371051, at *1 n.1 (C.D. Cal. Oct. 21, 2022) (judicially noticed defendant's
 26 online User Agreement and Intellectual Property Policy and User Agreement);
 27 *Yoon*, 549 F. Supp. 3d at *1079 (finding entire website proper for judicial

1 notice). As the Business Help Center webpages are publicly available, and
 2 Plaintiff relies on their contents such that they cannot be subject to reasonable
 3 dispute, the webpages are proper for judicial notice.

4 **III. THE COURT CAN TAKE JUDICIAL NOTICE OF THE CONSUMER
 5 REPORTS ARTICLE**

6 A court may judicially notice news articles and Internet publications on a
 7 motion to dismiss “to prove the availability of information contained in the
 8 publications.” *See Lifeway Foods, Inc. v. Millenium Prods., Inc.*, No. 16-cv-7099-
 9 R, 2016 WL 7336721, at *1 (C.D. Cal. Dec. 14, 2016).

10 Plaintiff cites a September 29, 2022 Consumer Reports article to support her
 11 theory of how she was harmed by TikTok. *See* Compl. ¶ 40. **Exhibit C** of the Jih
 12 Decl. is a true and accurate copy of the CONSUMER REPORTS article titled, “*How
 13 TikTok Tracks You Across the Web, Even If You Don’t Use the App*,” published
 14 September 29, 2022, and is publicly available at: <https://www.consumerreports.org/electronics-computers/privacy/tiktok-tracks-you-across-the-web-even-if-you-dont-use-app-a4383537813/>, (last visited July 21, 2023). The article is proper for judicial
 17 notice.

18 **IV. THE COURT CAN TAKE JUDICIAL NOTICE OF THE WEBSITES
 19 PLAINTIFF ALLEGEDLY VISITED**

20 Courts take notice of pages on publicly available websites, including sign-
 21 up flow and privacy policies or notices on websites. *See, e.g., Lacoste v. Keem*,
 22 No. 2:20-cv-02323-RGK (JPR), 2020 WL 5239110, at *2 n.2 (C.D. Cal. June 23,
 23 2020) (judicial notice of the terms of service pages for Youtube, Twitter,
 24 Instagram, and Snapchat); *Roley v. Google LLC*, No. 18-cv-07537-BLF, No. 18-
 25 cv-07537-BLF, 2019 WL 1779974, at *1 n.2 (N.D. Cal. Apr. 23, 2019) (judicial
 26 notice of sign-up page); *Yuksel v. Twitter, Inc.*, No. 22-cv-05415-TSH, 2022 WL
 27 16748612, at *2-3 (N.D. Cal. Nov. 7, 2022) (judicial notice of sign-up page and

1 terms of service); *Javier v. Assurance IQ, LLC*, No. 4:20-cv-02860-JSW, 2021
 2 WL 940319, at *2 (N.D. Cal. Mar. 9, 2021) (judicial notice of privacy policy); *Evo
 3 Brands, LLC v. Al Khalifa Grp. LLC*, No. 2:22-cv-03909, 2023 WL 2768743, at
 4 *4-5 (judicial notice of archival images of a website on Wayback Machine).

5 Plaintiff's Complaint is premised on the theory that her data was unlawfully
 6 collected, specifically on the websites Hulu, Etsy, and Build-a-Bear. *See* Compl.
 7 ¶¶ 76-78. Plaintiff alleges that the alleged sharing of her data on these websites
 8 was not disclosed. *See id.* ¶¶ 42, 75-78.

- 9 • **Exhibit D** of the Jih Decl. is a true and correct copy of Hulu's Privacy
 10 Policy as linked from its website, via its parent company The Walt Disney
 11 Company, which is publicly available at:
 12 <https://privacy.thewaltdisneycompany.com/en/current-privacy-policy/>, (last
 13 visited July 19, 2023);
- 14 • **Exhibit E** of the Jih Decl. is a true and accurate copy of Hulu's Privacy
 15 Policy captured by the Internet Archive's Wayback Machine on January 21,
 16 2017, and is publicly available at:
 17 <https://web.archive.org/web/20170121010234/https://www.hulu.com/privacy>, (last visited July 19, 2023); Plaintiff alleges that she visited the
 18 Hulu website from "time to time" since 2017. Compl. ¶ 76;
- 19 • **Exhibit F** of the Jih Decl. is a true and accurate copy of a Hulu webpage
 20 titled, *Create Your Account*, which is publicly available at:
 21 <https://signup.hulu.com/account>, (last visited July 19, 2023);
- 22 • **Exhibit G** of the Jih Decl. is a true and accurate copy of Etsy's Privacy
 23 Policy which is publicly available at: <https://www.etsy.com/legal/privacy-archived/>, (last visited July 19, 2023);

- **Exhibit H** of the Jih Decl. is a true and accurate copy of a screenshot of a portion of Etsy's sign-in prompt, which is publicly available at: <https://www.etsy.com/>, (last visited July 19, 2023);
- **Exhibit I** of the Jih Decl. is a true and accurate copy of Build-a-Bear Workshop's Privacy Policy, which is publicly available at: <https://www.buildabear.com/privacy-policy.html#k>, (last visited July 19, 2023);
- **Exhibit J** of the Jih Decl. is a true and correct copy of a screenshot of a notice on Build-a-Bear Workshop's homepage titled, *This Websites Uses Cookies*, which is publicly available at: <https://www.buildabear.com>, (last visited July 19, 2023).

These websites and the webpages cited are proper for judicial notice.

V. THE COURT CAN TAKE JUDICIAL NOTICE OF THE LEGISLATIVE HISTORY OF CAL. PENAL CODE § 632

Courts in this District routinely take notice of legislative history as such documents fit squarely within Federal Rule of Evidence 201. *See Gonzales v. Marriott Int'l, Inc.*, 142 F. Supp. 3d 961, 968 (C.D. Cal. 2015) (collecting cases).

The legislative history of Cal. Penal Code § 632 is appropriately the subject of judicial notice. **Exhibit K** of the Jih Decl. is a true and correct copy of Assemb. Bill No. 1671 (2015-2016 Reg. Sess.) as amended March 17, 2016, which is publicly available at: http://www.leginfo.ca.gov/pub/15-16_bill/asm/ab_1651-1700/ab_1671_bill_20160317_amended_asm_v98.html, (last visited July 19, 2023).

VI. CONCLUSION

For these reasons, Defendants respectfully request that the Court consider **Exhibits A-J** as incorporated by reference, deem **Exhibits A-K** as judicially noticeable, and consider these Exhibits in connection with Defendants' Motion.

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2 Dated: July 24, 2023
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4 By: /s/ Victor Jih
5 Victor Jih

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